

## **SUBCHAPTER B : PERMIT REQUIREMENTS**

### **UH - APPLICABILITY**

#### **§122.120. Applicability.**

The owner or operator of a site shall submit an application(s) to the Texas Natural Resource Conservation Commission for a federal operating permit under the requirements of this chapter if the site has one or more of the following:

- (1) any major source as defined in §122.10 of this title (relating to General Definitions);
- (2) any affected source as defined in §122.12 of this title (relating to Acid Rain Definitions);
- (3) any solid waste incineration unit required to obtain a federal operating permit pursuant to the Federal Clean Air Act (the Act), §129(e) of Title I;
- (4) any non-major source which the United States Environmental Protection Agency, through further rulemaking, has designated as no longer exempt from the obligation to obtain a federal operating permit. For the purposes of this section, non-major source shall be defined as:
  - (A) any source, including an area source, subject to a standard, limitation, or other requirement under the Act, §111 (New Source Performance Standards);
  - (B) any source, including an area source, subject to a standard or other requirement under the Act, §112 (Hazardous Air Pollutants), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under the Act, §112(r) (Prevention of Accidental Releases); or
  - (C) any source in a source category designated by the Administrator pursuant to Title III of the Act.

Adopted August 23, 1993

Effective September 20, 1993

#### **§122.122. Potential to Emit.**

(a) For purposes of determining applicability of the Federal Operating Permit program under this chapter, the owner or operator of stationary sources without any other federally enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable. Emission rates in permits, standard exemptions, other preconstruction authorizations, and registrations of emissions provided for under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) are also federally enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Natural Resource Conservation Commission or any air pollution control agency having jurisdiction.

Adopted August 23, 1993

Effective September 20, 1993

## PERMIT APPLICATION

### §122.130. Responsibility to Apply.

(a) General requirement. After the effective date of this chapter, the owner or operator shall submit to the Texas Natural Resource Conservation Commission (TNRCC) a timely and complete permit application for each site subject to the requirements of this chapter and in accordance with this section.

(b) Interim program. The following sites are subject to the interim federal operating permit program and as such, the owners or operators of these sites shall submit initial permit applications according to the application submittal schedule for the interim program:

(1) any site with an affected source as defined in §122.12 of this title (relating to Acid Rain Definitions);

(2) any site whose primary Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) is one of the following (for purposes of this subsection, each site shall have only one primary SIC code):

- (A) Petroleum and Natural Gas, 1311;
- (B) Natural Gas Liquids, 1321;
- (C) Electric Services, 4911;
- (D) Natural Gas Transmission, 4922;
- (E) Natural Gas Transmission and Distribution, 4923; or
- (F) Petroleum Bulk Stations and Terminals, 5171.

(c) Application submittal schedule for the interim program.

(1) No later than six months after the effective date of the interim federal operating permit program, the designated representative of each affected source shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file a permit application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the TNRCC no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides pursuant to the Act, §407. This subsection shall not apply to affected sources that elect to become affected pursuant to the Act, §410.

(2) No later than six months after the effective date of the interim federal operating permit program, the owner or operator of any site listed in subsection (b)(2) of this section shall submit a permit application, except that if any owner or operator has more than one site listed in subsection

(b)(2) of this section, then the owner or operator shall submit permit applications for no less than 10% of such sites.

(3) No later than 12 months after the effective date of the interim federal operating permit program, the owner or operator shall submit an initial permit application for those remaining site(s) listed in subsection (b)(2) of this section which did not submit an application pursuant to paragraph (2) of this subsection.

(d) Application submittal schedule after full program approval. All sites, other than those identified in subsection (b) of this section, which satisfy the criteria of §122.120 of this title (relating to Applicability), shall be subject to the fully approved federal operating permit program and shall submit initial permit applications no later than 12 months after the effective date of the fully approved federal operating permit program.

(e) Effective date. Owners or operators of sites that become subject to this chapter after the effective date of either the interim or full program shall submit permit applications no later than 12 months after the issuance or approval date of the preconstruction authorization required under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

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Effective September 20, 1993

#### **§122.132. Application and Required Information.**

(a) A permit application shall include any information, including confidential information, deemed necessary by the Texas Natural Resource Conservation Commission (TNRCC) to determine the applicability of, or to codify any applicable requirement, except that applications for a general permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general permit. The federal operating permit application shall include, but is not limited to, a General Application Form for Federal Operating Permit, all information requested by that form, and the information described as follows:

(1) for each emission unit, or group of similar emission units:

(A) information identifying each applicable requirement, any corresponding emission limitation and any corresponding monitoring, reporting, and recordkeeping requirements;

(B) information identifying potentially applicable requirements for that particular type of emission unit and the basis for the determination that those applicable requirements do not apply;

(2) a proposed monitoring, testing, recordkeeping, and reporting protocol for each relevant emission unit at the site;

(3) information as requested by the nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by the acid rain rules;

(4) a statement certifying that a risk management plan, if applicable, or a schedule to submit such plan has been submitted in accordance with the Federal Clean Air Act, §112(r)(7);

(5) (state only requirement) the following identifications on the application:

(A) Each grandfather unit at the site shall be identified as a presumptive grandfather unit or an actual grandfather unit, regardless of whether or not that unit is a relevant emission unit.

(B) Each emission unit that would be a presumptive grandfather except for the fact that the total annual maximum emission rate or operational limits that are related to the annual emissions (e.g., production, fuel firing, throughput, sulfur content, operating hours, etc., as appropriate) for the emission unit are established in a permit, special permit, or special or standard exemption issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(i) For each emission unit, the application shall identify the total annual maximum emission rate or operational limits that were previously defined and documented, and the permit, special permit, or special or standard exemption number in which this information was established and any documentation or basis for that determination.

(ii) If, during the permit application review, the TNRCC determines that such emission rates or operational limits that were defined or documented do not reflect actual grandfather rates, then the applicant must supply the information required in subparagraphs (C) or (D) of this paragraph to establish the presumptive grandfather rate.

(C) The application shall provide information to define and document the presumptive grandfather rate for each unit defined in subparagraph (A) of this paragraph at the site. Information provided in this section to define and document the presumptive grandfather rate shall include available data related to emissions prior to January 1, 1994, as follows.

(i) The documentation of the presumptive grandfather emission rate shall be based on the best available of data on the emission rate, equipment configuration, and other emissions-related data during the seven-year period prior to January 1, 1994, which best reflect the presumptive grandfather rate.

(ii) The best available data would be the average of 24 consecutive months of emissions data or data that can be related to emissions (such as production rate, fuel firing, throughput, sulfur content, etc.) during the seven-year period referenced in clause (i) of this subparagraph. Less than 24 consecutive months of data may be used, upon approval by the TNRCC during the permit application review, if it is more representative of the range of operations which could be reasonably expected from the existing equipment configuration.

(iii) Any other method proposed by the applicant during the permit application review and that the Executive Director approves as representative of the operations and

resulting emissions which may reasonably have occurred prior to 1971 may be used to define the presumptive grandfather rate.

(D) In any event, the actual grandfather rate for the emission unit shall be established if the applicant provides 12 consecutive months of emissions or emissions-related data from prior to September 1, 1971, documenting the operations prior to September 1, 1971. Less than 12 consecutive months of data prior to September 1, 1971, may be used, upon approval by the TNRCC, if it is determined by the TNRCC during the permit application review that there is sufficient data to demonstrate that it reflects operations prior to September 1, 1971.

(E) Upon issuance of the permit, the presumptive or actual grandfather rate established by the data submitted shall be the grandfather rate in subparagraph (D) of this paragraph which the unit may not operate without first obtaining or qualifying for preconstruction authorization in accordance with the requirements of Chapter 116 of this title. This grandfather rate does not remove the responsibility of the applicant to obtain or qualify for any necessary preconstruction authorization in accordance with the requirements of Chapter 116 of this title prior to making any physical changes or constructing a new facility source at the emission unit regardless of whether this grandfather rate is exceeded as a result of that physical change or construction. A grandfather rate shall not be established which violates any emission limitation or standard required under any chapter of this title. The establishment of this grandfather rate does not remove any liabilities or potential enforcement action for past or future exceedances of the actual grandfather rate in violation of Chapter 116 of this title.

(b) Each federal operating permit application shall include a compliance plan. Such plan shall contain the following:

(1) a description of the compliance status of each relevant emission unit at the site with respect to all applicable requirements;

(2) a statement that all relevant emission units at the site will:

(A) except as provided in paragraph (3) of this subsection, continue to comply with the applicable requirements; and

(B) comply, as required, with any applicable requirements that become effective during the permit term;

(3) for those relevant emissions units not in compliance with applicable requirements:

(A) a narrative description of how the emission unit will come into compliance with the applicable requirements;

(B) a compliance schedule containing a schedule of remedial measures, including, but not limited to, an enforceable sequence of actions; and

(C) a schedule for submission of certified progress reports. After issuance of the permit, the certified progress reports shall be submitted no less frequently than every six months.

(c) A compliance certification shall be included with the federal operating permit application consistent with the requirements of §122.143 of this title (relating to Permit Conditions).

(d) The applicant shall provide to the United States Environmental Protection Agency a copy of the permit application.

(e) A responsible official shall certify, consistent with §122.165 of this title (relating to Certification by a Responsible Official), all information submitted under this section.

Adopted August 23, 1993

Effective September 20, 1993

**§122.133. Timely Application.**

(a) A timely application for a site applying for a federal operating permit for the first time is one that is submitted in accordance with §122.130 of this title (relating to Responsibility to Apply).

(b) A timely application for a significant permit modification to a federal operating permit is one filed no later than 12 months after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(c) A timely application for a permit renewal is one that is submitted at least six months, but no earlier than 18 months, prior to the date of permit expiration.

Adopted August 23, 1993

Effective September 20, 1993

**§122.134. Complete Application.**

(a) To be complete, an application shall provide all information required in §122.132 of this title (relating to Application and Required Information) except that:

(1) applications for revision to a federal operating permit shall only be required to provide information related to the proposed change; and

(2) applications for a general permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general permit.

(b) The application shall be deemed complete, unless the Texas Natural Resource Conservation Commission requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt.

Adopted August 23, 1993

Effective September 20, 1993

**§122.135. Grandfather Requirements.**

The portions of this chapter, specifically §122.132 of this title (relating to Application and Required Information), which address the requirements dealing with the submission of actual or presumptive grandfather emission rates are not applicable to the owners or operators of sites subject to the federal operating permits program. Sites subject to the federal operating permits program are identified in §122.130 of this title (relating to Responsibility to Apply).

Adopted October 9, 1996

Effective November 4, 1996

**§122.136. Application Deficiencies.**

(a) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a federal operating permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information no later than 60 days after such discovery.

(b) An applicant shall provide additional information as necessary to address any applicable requirements, as defined in this chapter, that this site becomes subject to after the date the owner or operator filed a complete application.

(c) If while processing an application that has been deemed to be complete, the Texas Natural Resource Conservation Commission determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

Adopted August 23, 1993

Effective September 20, 1993

**§122.138. Application Shield.**

If the owner or operator of a site submits a timely and complete application(s) for permit issuance, significant permit modification to a permit, or renewal, the site's failure to have a federal operating permit is not a violation of this chapter until the executive director takes final action on the permit application. This protection shall cease to apply if, subsequent to the application being deemed complete, the applicant fails to submit in writing to the executive director, by the deadline specified, any additional information identified as necessary to process the application.

Adopted August 23, 1993

Effective September 20, 1993

**§122.139. Application Review Schedule.**

The Texas Natural Resource Conservation Commission (TNRCC) shall:

(1) under an interim program, for those sites required to file initial applications within the first year of the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after such effective date;



(2) under the fully approved program, for those sites required to file initial applications prior to or within one year of the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after such effective date;

(3) except as noted in paragraph (1) or (2) of this section, take final action on an application for a permit, significant permit modification, or permit renewal within 18 months of the date on which the TNRCC deemed an application complete; and

(4) take final action on any complete permit application containing an early reduction demonstration under the Federal Clean Air Act, §112(i)(5), within nine months of receipt of the complete application.

Adopted August 23, 1993

Effective September 20, 1993

## **UH - PERMIT CONTENT**

### **§122.141. Authority.**

(a) Federal operating permits may contain general and special terms and conditions. The permittee shall comply with any and all such terms and conditions.

(b) The Texas Natural Resource Conservation Commission shall not grant a variance, pursuant to the Texas Health and Safety Code, §382.028, from the requirements of this chapter to apply for or operate under a permit.

Adopted August 23, 1993

Effective September 20, 1993

### **§122.143. Permit Conditions.**

Unless otherwise specified in the permit, the permittee shall comply with each of the following conditions.

#### **(1) General permit conditions.**

(A) Compliance with the federal operating permit does not relieve the permittee's obligation to comply with any other applicable Texas Natural Resource Conservation Commission (TNRCC or Commission) rules, regulations, or orders.

(B) The federal operating permit shall expire five years from the issuance of the proposed permit.

(C) The permittee shall allow representatives from the TNRCC or the local air pollution control program having jurisdiction to perform the following:

(i) enter upon the permittee's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit;

(iii) inspect, at any time other than when the presence of the TNRCC personnel would interfere with the ability of the permittee to respond to an emergency situation, any emission unit, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor substances or parameters for the purpose of assuring compliance with the permit or applicable requirements at any time.

(D) Records required under this permit shall be provided, upon request, to representatives from the TNRCC or the local air pollution control program having jurisdiction within a reasonable period of time.

(E) The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(F) The permit may be revised, revoked, reopened, and reissued, or terminated for cause as defined in §122.231 of this title (relating to Permit Reopenings). The filing of a request by the permittee or notice of intent by the TNRCC for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(G) Unless the time is extended by the commission or its designee, the permittee shall furnish within 60 days any information that the executive director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the executive director, copies of records required to be kept by the permit, including any confidential information. It may be required that such records be sent directly to the United States Environmental Protection Agency (EPA) along with any claim of confidentiality. Any such claim should be made in accordance with federal law, including 40 Code of Federal Regulations 2.

(H) If at the time of promulgation of a new applicable requirement, the permit has three or more years remaining in its term, the permittee shall request a reopening and revision of the permit within 12 months of promulgation of a new applicable requirement not already incorporated into a permit. No such reopening is required if the compliance date of the requirement is later than the permit expiration date, or if the new requirement is incorporated in any federal operating permit held by the site which addresses the emission unit(s) subject to the new requirement.

(I) The permittee shall pay fees to the TNRCC consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(J) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(K) The permit does not convey any property rights of any sort, or any exclusive privilege.

(2) Recordkeeping conditions. The permittee shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information may include, but shall not be limited to, the data from all calibration and maintenance records and all stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The data may be stored electronically. However, it shall be made available, within a reasonable period of time, in a readable

electronic or hard copy form upon request by an authorized representative of the TNRCC or any local air pollution control program having jurisdiction.

(3) Reporting conditions. The permit shall incorporate all applicable monitoring data reporting requirements as follows.

(A) After issuance of the permit, reports of any required monitoring shall be submitted to the TNRCC at least every six months or more frequently if required by an applicable requirement. All instances of deviations shall be clearly identified in such reports. All required reports shall be certified by a responsible official.

(B) Within two weeks after occurrence, the permittee shall report, in writing, to the TNRCC any deviations, the probable cause of such deviations, and any corrective actions or preventative measures taken, except in such cases that all information required under this section is submitted, in writing, under subparagraph (C) of this paragraph.

(C) Emissions from any upset, start-up, shutdown, or maintenance activities shall be reported as required under Chapter 101 of this title (relating to General Rules).

(4) Compliance certification conditions. After issuance of the permit, compliance certifications shall be submitted to the TNRCC and EPA at least every 12 months, or more frequently if required by an applicable requirement. The compliance certification shall include at a minimum:

(A) the identification of each term, condition, or applicable requirement of the permit for which the permittee shall certify compliance;

(B) the compliance status of the relevant emission units listed in the permit relative to any applicable term, condition, or applicable requirement over the entire 12-month certification period;

(C) a statement of whether compliance was continuous or intermittent;

(D) the method(s) used for determining the compliance status of each relevant emission unit; and

(E) a certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), of all the information submitted under this section.

Adopted August 23, 1993

Effective September 20, 1993

#### **§122.145. Permit Content Requirements.**

(a) Each federal operating permit shall contain terms and conditions regarding emission limitations and standards, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the applicable requirements. Any document (including reports) submitted to the Texas Natural Resource Conservation Commission (TNRCC) that is specifically required by a permit shall contain a certification by a responsible official.

(b) Each permit shall contain the following terms and conditions with respect to monitoring:

(1) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any enhanced monitoring procedures and methods promulgated pursuant to the Act, §504(b) and §114(a)(3);

(2) where the applicable requirements do not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), terms and conditions which require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the site's compliance with the permit. Such monitoring conditions shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping may be sufficient to meet the requirements of this paragraph; and

(3) conditions, as necessary, concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

(c) Each permit shall contain terms and conditions that would require recordkeeping of monitoring information including, but not limited to:

(1) the date, place as defined in the permit, and time of sampling or measurements;

(2) the date(s) analyses were performed;

(3) the company or entity that performed the analyses;

(4) the analytical techniques or methods used;

(5) the results of such analyses; and

(6) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement.

(d) For sites with emission units not in compliance with the applicable requirements at the time of issuance, the permit shall:

(1) contain a compliance schedule consistent with §122.132(b)(3)(B) of this title (relating to Application and Required Information); and

(2) require progress reports consistent with §122.132(b)(3)(C) of this title. The progress reports shall include:

(A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) At the discretion of the TNRCC and based upon a request and sufficient demonstration by the applicant, a federal operating permit may establish certain interpretations of specific language and definition of specific terms in an applicable requirement. These interpretations by the TNRCC, for the purpose of determining compliance with the specific applicable requirement, shall not be modified by the TNRCC until notification is provided to the permittee. Within 90 days of notification of a change in interpretation by the TNRCC, the permittee shall apply for the appropriate permit revision to reflect the new interpretation of the applicable requirement.

Adopted August 23, 1993

Effective September 20, 1993

## **UH - PUBLIC NOTIFICATION AND COMMENT PROCEDURES**

### **§122.150. Applicability.**

(a) Permit, significant permit modification, or renewals. Any person who applies for a permit, a significant permit modification, or a permit renewal shall be required to provide for public notification under the procedures in this subchapter.

(b) General permits. General permits are not subject to the public notification and comment procedures of this subchapter. Procedural requirements for general permits are listed under §122.202 of this title (relating to General Permits).

(c) Reopenings. Any permittee whose federal operating permit is reopened under §122.231 of this title (relating to Permit Reopenings) shall be required to provide for public notification of such reopening and revision of the permit under the procedures in this subchapter.

Adopted August 23, 1993

Effective September 20, 1993

### **§122.152. Public Notification Requirements.**

(a) Notification by applicant. For those federal operating permits or permit applications meeting the criteria in §122.150 of this title (relating to Applicability), the Texas Natural Resource Conservation Commission (TNRCC) shall direct the applicant to conduct public notice of the draft operating permit. The public notice shall be conducted in accordance with §122.153 of this title (relating to Public Notice Format).

(b) Availability of application for review. The TNRCC shall make available for public inspection the following information related to the application: the completed application (except sections relating to confidential information), the draft federal operating permit, the compliance plan, the compliance certification, and monitoring reports, if required. All such information shall be available for inspection throughout the comment period, and thereafter, during normal business hours, at the TNRCC Austin office and at the appropriate TNRCC regional office in the region where the site is located.

(c) The TNRCC shall provide a copy of the notice of the draft permit, specified in §122.153 of this title, to any person upon written request.

(d) Notification of TNRCC and others. When newspaper notices are published consistent with §122.153 of this title, the applicant shall furnish a copy of such notices and date of publication to the TNRCC in Austin; the United States Environmental Protection Agency's regional administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the site is located; and the air pollution control agency of any affected state. Along with such notices furnished to the TNRCC, the applicant shall certify in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the signs required by §122.154 of this title (relating to Sign Posting Requirements) have been posted consistent with the provisions of that section.

Adopted August 23, 1993

Effective September 20, 1993

**§122.153. Public Notice Format.**

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a federal operating permit, a significant permit modification, a reopening to a permit, or a permit renewal, shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the site is located, or in the municipality nearest to the location of the site. The notice shall contain the following information:

- (1) permit application number;
- (2) applicant name and address;
- (3) activity or activities involved in the federal operating permit application or reopening;
- (4) description of the location of the site or proposed location of the site;
- (5) the air pollutants involved in any significant permit modification;
- (6) location and availability of copies of the completed permit application, the draft permit, and all other relevant supporting materials;
- (7) description of the comment procedures, including the duration of the comment period and a statement of procedures to request a hearing;
- (8) notification that a person who may be affected by the emission of air pollutants from the site is entitled to request a hearing pursuant to §122.316 of this title (relating to Hearing and Comment Procedures); and
- (9) name, address, and phone number of the Texas Natural Resource Conservation Commission regional office to be contacted for further information.

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches), and whose shortest dimension is at least 7.6 centimeters (three inches), shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published pursuant to subsection (a) of this section in the public notice section of the same issue.

Adopted August 23, 1993

Effective September 20, 1993

**§122.154. Sign Posting Requirements.**

(a) At the applicant's expense, a sign or signs shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the Texas Natural Resource Conservation Commission (TNRCC) may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:



(1) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;

(2) signs shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT" in no less than two-inch, boldface, block printed capital lettering;

(3) signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch boldface, block printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);

(4) signs shall include the words "for further information contact" in no less than 1/2-inch lettering;

(5) signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate TNRCC regional office in no less than one-inch bold-face capital lettering and 3/4-inch, boldface, lower-case lettering; and

(6) signs shall include the phone number of the appropriate TNRCC regional office in no less than two-inch, boldface numbers.

(b) The sign or signs shall be in place by the date of publication of the newspaper notice required by §122.153 of this title (relating to Public Notice Format) and shall remain in place and legible throughout the period of public comment provided for in §122.155 of this title (relating to Public Comment Period).

(c) Each sign placed at the site shall be located within 10 feet of each (every) property line paralleling a street or other public thoroughfare. Signs shall be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare.

(d) The TNRCC may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the TNRCC under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.

Adopted August 23, 1993

Effective September 20, 1993

**§122.155. Public Comment Period.**

(a) A 30-day public comment period shall be held by the Texas Natural Resource Conservation Commission (Commission) or its designee on a federal operating permit or renewal application, or on a reopening of a federal operating permit.

(b) The Commission or its designee shall receive public comment for 30 days after the last day on which notice of the public comment period is published. During the 30-day public comment period, any person may submit written comments on the draft permit or may, in writing, request a notice and comment hearing pursuant to §122.316 of this title (relating to Hearing and Comment Procedures for Operating Permits).

(c) After the public comment period and the conclusion of any notice and comment hearing convened pursuant to Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition), the Commission or its designee shall send notice of its proposed final action on the permit application, or renewal application or on the reopening of a federal operating permit, to any person who commented during the public comment period, and to the applicant. The notice shall include:

- (1) the response to any comments submitted during the public comment period;
- (2) identification of any change in the conditions in the draft permit and the reasons for the change; and
- (3) a description of the process for citizen petitions to the United States Environmental Protection Agency pursuant to §122.312 of this title (relating to United States Environmental Protection Agency Review).

Adopted August 23, 1993

Effective September 20, 1993

## MISCELLANEOUS

### **§122.161. Miscellaneous.**

(a) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the Texas Natural Resource Conservation Commission.

(b) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization, as defined in §122.10 of this title (relating to Definitions).

(c) The Act, §112(g), concerning modifications of sources of hazardous air pollutants, shall apply only to those sites satisfying the criteria of §122.130 of this title (relating to Responsibility to Apply). The Act, §112(g), shall apply at the earliest time at which those sites are required to apply in accordance §122.130 of this title.

Adopted August 23, 1993

Effective September 20, 1993

### **§122.163. Effective Date.**

(a) Compliance with the requirements of this chapter will be required on the date of approval, as published in the Federal Register, of the Texas Natural Resource Conservation Commission (TNRCC) federal operating permit program by the United States Environmental Protection Agency.

(b) Sites satisfying the criteria of §122.120 of this title (relating to Applicability) become subject to this chapter either on the effective date of this chapter or upon issuance or approval of a preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification), whichever is later.

(c) Notice shall be published by the TNRCC in the Texas Register of the effective date of the interim federal operating permit program and the fully approved program. Failure of the TNRCC to publish shall not affect the effective program dates.

Adopted August 23, 1993

Effective September 20, 1993

### **§122.164. Confidential Information.**

Any information provided to the Texas Natural Resource Conservation Commission pursuant to this chapter that relates to secret processes or methods of manufacture or production may be identified as confidential when submitted. Any information so identified is entitled to protection from disclosure to the extent provided by law. If confidential information is submitted, an unclassified synopsis of confidential information shall be provided to ensure a complete public record file. Any information required to be submitted to the United States Environmental Protection Agency (EPA) may be submitted pursuant to EPA's procedures governing confidential information.

Adopted August 23, 1993

Effective September 20, 1993

**§122.165. Certification by a Responsible Official.**

Any certification submitted pursuant to this chapter shall contain a certification of truth, accuracy, and completeness by a responsible official. Unless specified otherwise, any certification required under this chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The Texas Natural Resource Conservation Commission shall be notified, pursuant to §122.211 of this title (relating to Administrative Permit Amendments), of any appointment of a new responsible official.

Adopted August 23, 1993

Effective September 20, 1993